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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Christopher F. Freudenberg et al.
Serial No.: 10/722,041
Filed: November 24, 2003
For: PLASTIC SHEET BARRIER
ENCLOSURE SYSTEM, AND
METHOD

Examiner: Purol, David M.
Group Art Unit: 3634
Docket No.: BPL0002/US

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REPLY BRIEF

Dear Sir or Madam:

This Reply Brief is submitted in response to the Examiner's Answer mailed August 28, 2008, in the above-identified patent application, which is under appeal.

It is further submitted that this Reply Brief is timely filed within the two-month period set out in M.P.E.P § 1208 from the date of the Examiner's Answer. No fee is believed to be due at this time. If any fees are required, please charge them to Deposit Account No. 50-1775 and notify us of the same.

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III. Status of Claims

The Examiner's Answer includes a statement that the status of the claims as contained within Applicants' Appeal Brief is correct.

The status was provided as set forth below.

Claims 1, 2, 6, 7, 12-21, 23-27, 29, 30, 33 and 34 are pending in the above-identified patent application. Claims 1, 21 and 34 are independent. Claim 2, 6, 7, 12-14, and 19 are dependent from claim 1, claims 15 and 16 are dependent from claim 14, claim 17 is dependent from claim 16, claim 18 is dependent from claim 17, claim 20 is dependent from claim 19, claim 23 is dependent from claim 21, claims 24, 25 and 33 are dependent from claim 23, claims 26 and 27 are dependent from claim 25, and claim 29 is dependent from claim 30.

Claims 1, 2, 6-7, 12-21, 23-27, 29, 30, 33 and 34 stand rejected over Iwen et al. (U.S. Patent No. 6,355,323) in view of Eller et al. (U.S. Patent No. 5,090,972) under 35 U.S.C. section 103(a) within a single ground of rejection as set out in greater detail below.

This rejection of claims 1, 2, 6-7, 12-21, 23-27, 29, 30, 33 and 34 is appealed.

II. Grounds of Rejection to be Reviewed on Appeal

The Examiner's Answer includes a statement that the grounds of rejection to be reviewed on appeal as contained within Applicants' Appeal Brief is correct.

The grounds were provided as set forth below.

Whether claims 1, 2, 6-7, 12-21, 23-27, 29, 30, 33, and 34 are patentable under 35 U.S.C. 103(a) over the Iwen et al. reference taken in view of the Eller et al. reference.

III. Argument

In response to the Examiner's Answer, Applicants set forth points of clarification below.

Within the rejection of record, the Examiner relies upon the prior art discussion as is set out within the Iwen et al reference at column 1. This background discussion discusses the difficulty of applying plastic film as a “tedious operation” (column 1, line36-37) for which “Extreme care must be taken” (column 1, lines 47-48” based upon the use of a sheet of plastic that is adhered to a wall. Specifically, the prior art process that is described comprises the use of a single sheet to cover an entire wall that is adhered at top and bottom to the wall and then repeated to provide a double layer. That is to say that the second layer is redundant of the first layer as it is adhered in a way to cover the first layer in position. There is no description of applying plastic film sheets in an arrangement where the plural sheets are overlapped along an edge portion so that plural sheets are adhered to plural surfaces of structural elements to together create a barrier.

As is recited within the subject method independent claims 1 and 21 and within the subject enclosure independent claim 34, the plural sheets are overlapped in a manner to create a barrier. In claim 1, it is recited that the first and second barrier sheets are applied “so that the first barrier sheet length with the holding system is secured to the first surface of the first structural element at both the edge and intermediate zones and the second barrier sheet length with the holding system is adhesively sealed to an overlapping portion of the first barrier sheet length and the first surface of the first structural element.” This claimed structural relationship of a first and second sheet cannot be accomplished by the prior art process discussed in the Iwen et al reference. The same is true as to the recited limitation of claim 21 that recites a step of “securing a second barrier sheet length along side and in a similar direction as the first barrier sheet length by contacting adhesive of the edge zone of the second barrier sheet length with an overlapping portion of the first barrier sheet length and adhesive of the intermediate zone of the second barrier sheet length to at least the one non-working surface of the second structural element.” The same is even more clearly distinguished by the enclosure of independent claim 34 that creates structure comprising multiple barrier sheets with overlapping seams.

However, after relying on the acknowledged prior art disclosure of Iwen et al, within many of the Examiner's responses to Applicant's arguments, the Iwen et al reference is relied upon for the disclosure of the specific solution that they had developed as an improvement to the tedious process of the prior art that they describe in column 1. Apparently, the Examiner finds a combination of the prior art process and the process patented by Iwen et al as a replacement process to render the subject claims unpatentable. It is submitted that such an approach is erroneous in this case in that the developed process of Iwen et al is in all effect a process that was developed from and includes the teachings of the prior art process. Iwen et al, in fact, developed their patented process from the disclosure and teachings of their acknowledged prior art. To say a combination of teachings would lead another way is untenable. The process that Iwen et al developed leads to a solution that unlike the present invention reduces and minimizes the creation of any seams. Utilizing barrier sheets that create seams to make an enclosure is directly contrary to the methods that Iwen et al developed as an improvement to the acknowledged prior art.

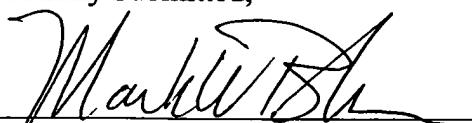
Moreover, neither of the acknowledged prior art or the developed process of Iwen et al provides for sheets to be arranged in an overlapping relationship as is presently claimed and thus cannot render the subject claims as anticipated or obvious. As to this deficiency, it is believed sufficed to say that the secondary reference to Eller et al could not possibly cure this deficiency as it only describes the use of overlapping sheets in a manner of creating a ventilation structure that provides for air flow between sheets. How could a ventilating structure possibly be used to teach creating overlapping sealed barrier sheets as a barrier structure?

IV. Conclusion

Accordingly, it is respectfully requested that the rejection of claims 1, 2, 6,-7, 12-21, 23-27, 29, 30, 33, and 34 be reversed.

Respectfully Submitted,

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VIII. Appendix – Claims on Appeal

1. (previously presented) A method for creating at least a partially enclosed space and controlled environment for abatement of physical material within a preexisting structure, the enclosed space being based at least in part on structural elements of the preexisting structure comprising:

attaching at least first and second barrier sheet lengths comprising separate lengths of flexible polymeric film in a sealed overlapping relationship to one another to a first surface of a first structural element of the preexisting space and attaching the overlapping barrier sheet lengths to a second surface of a second structural element of the preexisting space while at least partially covering an opening between the first and second surfaces for creating a barrier as part of an enclosure of a desired space with a controlled environment, said step of attaching at least the first and second barrier sheet lengths including using a holding system of each of the first and second barrier sheet lengths that extends over major surfaces thereof, wherein the holding system comprises an adhesive layer that substantially covers a major surface of each of the first and second barrier sheet lengths including an edge zone and an intermediate zone of the same major surface, so that the first barrier sheet length with the holding system is secured to the first surface of the first structural element at both the edge and intermediate zones and the second barrier sheet length with the holding system is adhesively sealed to an overlapping portion of the first barrier sheet length and the first surface of the first structural element.

2. (previously presented) The method of claim 1, wherein the holding system comprises pressure sensitive adhesive that is an acrylic adhesive.

3. (canceled)

4. (canceled)

5. (canceled)

6. (previously presented) The method of claim 1, wherein at least one barrier sheet length with pressure sensitive adhesive is adhered to more than one structural element of the preexisting structure.

7. (previously presented) The method of claim 1, wherein the barrier sheet lengths with pressure sensitive adhesive each comprise pressure sensitive adhesive provided in a substantially uniform manner over the major surface thereof, and the step of attaching that barrier sheet length to a structural element comprises adhering the barrier sheet length to the available surface of the structural component substantially uniformly.

8. (canceled)

9. (canceled)

10. (canceled)

11. (canceled)

12. (previously presented) The method of claim 1, wherein the first barrier sheet is adhered to at least a portion of a temporary structure of the preexisting structure.

13. (previously presented) The method of claim 1, wherein the first barrier sheet is adhered to at least a portion of a permanent structure of the preexisting structure.

14. (previously presented) The method of claim 1, wherein barrier sheet lengths are combined together and attached to the preexisting structure to create with the preexisting structure a substantially contained and enclosed space.

15. (previously presented) The method of claim 14, wherein at least a portion of one barrier sheet length covers an open area of the preexisting structure.

16. (previously presented) The method of claim 14, comprising steps within a method for removal of physical material from the enclosed space, wherein at least a portion of the preexisting structure with undesirable physical material is not covered with barrier sheet lengths so that physical material can be abated from the exposed preexisting structure.

17. (original) The method of claim 16, further comprising the step of removing physical material from the preexisting structure.

18. (previously presented) The method of claim 17, further comprising the application of a negative pressure of 0.02 inches of water within the enclosed space during the removal step while utilizing the holding systems of the first and second barrier sheet lengths to maintain billowing from the first and second surfaces of the first and second structural elements to less than 2 inches.

19. (previously presented) The method of claim 1, comprising attaching a target material over at least a surface portion of a structural element and subsequently securing at least one of the first and second barrier sheet lengths to the target material by at least one portion of the holding system as provided extending over a major surface of a barrier sheet length.

20. (previously presented) The method of claim 19, wherein the target material includes a pressure sensitive adhesive for attaching to the surface of a structural element.

21. (previously presented) A method for the abatement of physical material from a preexisting structure comprising:

- a. providing a structure having at least one working surface of a first structural element bearing a physical material to be removed, and at least one non-working surface of a second structural element,

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- b. providing a plurality of barrier sheet lengths, each length of barrier sheet comprising a flexible polymeric film and that includes a holding system comprising an acrylic pressure sensitive adhesive layer that substantially covers a major surface thereof, the holding system with removable pressure sensitive adhesive provided to create an edge zone and an intermediate zone of the major surface as it is substantially covered by adhesive,
- c. securing the holding system of a first barrier sheet length by contacting the adhesive of the first barrier sheet length to the one non-working surface of the second structural element and a non-working surface of at least one other structural element that is spaced from the second structural element, so that a layer of the first barrier sheet length is secured to plural non-working surfaces to form an enclosure with the working surface of the first structural element to isolate a space to contain the physical material for subsequent removal,
- d. securing a second barrier sheet length along side and in a similar direction as the first barrier sheet length by contacting adhesive of the edge zone of the second barrier sheet length with an overlapping portion of the first barrier sheet length and adhesive of the intermediate zone of the second barrier sheet length to at least the one non-working surface of the second structural element, and then
- e. applying a negative pressure of 0.02 inches of water within the enclosed space while utilizing the holding systems of the first and second barrier sheet lengths to maintain billowing from the non-working surfaces of the structural elements to less than 2 inches.

22. (canceled)

23. (previously presented) The method of claim 21, wherein a plurality of additional barrier sheet lengths are attached to one another as well as to surfaces of at least one structural element for creating the barrier as part of the enclosure.

24. (original) The method of claim 23 in which the removable pressure sensitive adhesive is a substantially continuous coating.

25. (original) The method of claim 23 in which the non-working surface is at least one of a floor, a wall, or a ceiling.

26. (original) The method of claim 25 in which the non-working surface is a plurality of walls.

27. (previously presented) The method of claim 25 in which the non-working surface is a ceiling and the ceiling is not covered.

28. (canceled)

29. (original) The method of claim 26 in which the non-working surface is a floor.

30. (previously presented) The method of claim 29 in which the floor is covered with another length of barrier sheet that comprises one of an adhesive coated sheet and a sheet at least partially covered with a removable pressure sensitive adhesive.

31. (canceled)

32. (canceled)

33. (original) The method of claim 23 in which the enclosure further includes a non-adhesive coated flexible plastic film.

34. (previously presented) An enclosure for isolating and containing physical materials comprising a structure having at least one working surface on a

first structural element bearing a physical material to be removed, and a plurality of non-working surfaces on other structural elements to which is secured a plurality of lengths of flexible barrier sheet material with at least a first length of barrier sheet material lengthwise overlapping with a second length of barrier sheet material, wherein each of the first and second length of barrier material comprises a flexible polymeric film and includes a holding system comprising an acrylic pressure sensitive adhesive layer that substantially covers one of its major surfaces and creates an edge zone and an intermediate zone, such that the working surface of the first structural element and the plurality of lengths of barrier sheet material extending between plural non-working surfaces together form at least part of the enclosure having a plurality of adhesively sealed seams created by overlapping portions of adjacent lengths of barrier material and adhesive provided on edge zones thereof.

35. (canceled)

36. (canceled)

37. (canceled)